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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ERIN GURSSLIN,

Plaintiff,

Civil Action No. 20-cv-6508

v.

THE CITY OF ROCHESTER, A MUNICIPAL ENTITY, POLICE
OFFICER JEREMY NELLIST, POLICE OFFICER JOSHUA
KELLY, COMMANDER FABIAN RIVERA, LIEUTENANT AARON
SPRINGER,

Defendants.

Video-recorded Deposition Upon Oral Examination of:

Chief Fabian Rivera

Location: Alliance Court Reporting, Inc.
109 South Union Street, Suite 400
Rochester, New York 14607

Date: March 15, 2023

Time: 11:00 a.m.

Reported By: MICHELLE MUNDT ROCHA and
MARY ELIZABETH PHILLIPS
Alliance Court Reporting, Inc.
109 South Union Street, Suite 400
Rochester, New York 14607



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A P P E A R A N C E S

Appearing Remotely on Behalf of Plaintiff:

Elliot D. Shields, Esq.

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Appearing on Behalf of Defendants:

Peachie L. Jones, Esq.

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Also Present:

Kenneth Williamson, Videographer

Alliance Court Reporting, Inc.

109 South Union Street, Suite 400

Rochester, New York 14607

* * *



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1 S T I P U L A T I O N S

2 WEDNESDAY, MARCH 15, 2023;

3 (Proceedings in the above-titled matter
4 commencing at 11:06 a.m.)

5 * * *

6 IT IS HEREBY STIPULATED by and between the
7 attorneys for the respective parties that this
8 deposition may be taken by the Plaintiff at this time
9 pursuant to notice;10 IT IS FURTHER STIPULATED, that all
11 objections except as to the form of the questions and
12 responsiveness of the answers, be reserved until the
13 time of the trial;14 IT IS FURTHER STIPULATED, that pursuant to
15 Federal Rules of Civil Procedure 30(e)(1) the witness
16 requests to review the transcript and make any
17 corrections to same before any Notary Public;18 IT IS FURTHER STIPULATED, that if the
19 original deposition has not been duly signed by the
20 witness and returned to the attorney taking the
21 deposition by the time of trial or any hearing in this
22 cause, a certified transcript of the deposition may be
23 used as though it were the original;24 IT IS FURTHER STIPULATED, that the
25 attorneys for the parties are individually responsible**ALLIANCE**

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1 P R O C E E D I N G S

2 for their certified transcript charge, including any
3 expedite or other related production charges in
4 accordance with Rochester Rules;

5 AND IT IS FURTHER STIPULATED, that the
6 Notary Public, MICHELLE MUNDT ROCHA, may administer
7 the oath to the witness.

11:05 8 * * *

11:05 9 THE VIDEOGRAPHER: We are on the record.

11:06 10 The time is 11:06 on March 15, 2023. My name is Ken
11:06 11 Williamson, of Alliance Court Reporting, located at
11:06 12 109 South Union Street, Rochester, New York. Today we
11:06 13 are located at Alliance Court Reporting.

11:06 14 We are about to begin the video-recorded
11:06 15 deposition of Fabian Rivera in the matter of Erin
11:06 16 Gursslin, Plaintiff, versus the City of Rochester, a
11:06 17 Municipal Entity, Police Officer Jeremy Nellist,
11:06 18 Police Officer Joshua Kelly, Commander Fabian Rivera,
11:06 19 Lieutenant Aaron Springer, Defendants. Today's matter
11:06 20 is being video-recorded on behalf of the Plaintiff.

11:07 21 Counsel, please state your appearances for
11:07 22 the record, and please begin with the noticing
11:07 23 attorney.

11:07 24 MR. SHIELDS: Elliot Shields, Roth and
11:07 25 Roth LLP, for the Plaintiff, Erin Gursslin.



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1 CHIEF FABIAN RIVERA - BY MR. SHIELDS

02:19 2 additional trainings and such or corrective measures
02:19 3 or such.

02:19 4 Q. During your entire time at the RPD, are
02:19 5 you aware of any officer ever being disciplined for
02:19 6 shooting a dog?

02:19 7 MS. JONES: Objection.

02:19 8 A. No. You know, personally I only know four
02:20 9 officers that, you know, have shot at dogs. Never
02:20 10 heard of them being disciplined -- or five.
02:20 11 Ridiculed, yes. Not disciplined. But no, not aware
02:20 12 of any punishments. And at the command staff level,
02:20 13 none.

02:20 14 Q. When you say "ridiculed," can you explain
02:20 15 what you mean?

02:20 16 A. Well, one case was Mike Johnson, Korey
02:20 17 McNees. Mike Johnson's a friend of mine. Came on a
02:20 18 year after. I think the aggressive dog was a smaller
02:20 19 dog in stature that approached them, and they did
02:20 20 discharge their weapons. And I believe they missed.
02:21 21 Hence the ridicule. The stature of the dog.

02:21 22 Q. So they were ridiculed because it was a
02:21 23 smaller dog?

02:21 24 A. The stature of the dog, yes, sir.

02:21 25 Q. Were they ridiculed also because they



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1 CHIEF FABIAN RIVERA - BY MR. SHIELDS

02:21 2 fired and they missed?

02:21 3 A. The number of rounds -- you probably have
02:21 4 this in your -- in some of your notes. The number of
02:21 5 rounds and -- yes.

02:21 6 Q. Do you remember the year of that incident
02:21 7 or the ballpark year?

02:21 8 A. Try 2002, 2003, maybe. Clinton Section,
02:21 9 third platoon hours. And it's Mikey Johnson and Korey
02:21 10 McNees.

02:22 11 The other three were -- you know, my time
02:22 12 on SWAT I only know -- there was only three dog
02:22 13 shootings. And that's Aaron Springer; Hickey, I think
02:22 14 Ryan, not Patrick; and either Romig or Eric Alexander.
02:22 15 I think it was Romig. Or Eric.

02:22 16 But in my 14 years those are the only, you
02:22 17 know, unfortunately dogs that we had to dispatch.

02:22 18 Q. And then how about your time as SOD
02:22 19 commander?

02:22 20 A. I think it was only one. I think that
02:22 21 was -- could have been Eric's off of Dewey Ave., white
02:22 22 house. It's always weird some things that I can
02:23 23 remember and some things I can't. It's just the
02:23 24 nature of some of the operations I've gone on.

02:23 25 Q. So there might have been more incidents



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1 CHIEF FABIAN RIVERA - BY MR. SHIELDS

02:23 2 that you don't remember?

02:23 3 A. No. Those are the three that I remember.

02:23 4 I'm just saying they stick out for certain reasons.

02:23 5 Q. So those are the three that you remember

02:23 6 because they stick out for certain reasons?

02:23 7 MS. JONES: Objection.

02:23 8 Q. Is that what you're saying?

02:23 9 A. Because they were on the team, yeah.

02:23 10 Team-related ones.

02:23 11 Q. And then there was also the incident at

02:23 12 issue in this lawsuit; correct?

02:23 13 MS. JONES: Objection.

02:23 14 A. And that was while I was off the team.

02:23 15 But, yes, I was still Special Operations Commander.

02:23 16 And that's Jeremy Nellist and Josh Kelly.

02:23 17 Q. During your time with the RPD, are you

02:24 18 aware of any officers being required to get any

02:24 19 additional training as a result of firing their

02:24 20 weapons at a dog?

02:24 21 MS. JONES: Objection.

02:24 22 A. I do not.

02:24 23 Q. So the incident with McNees and the other

02:24 24 officer, Johnson, in that incident they weren't

02:24 25 required to get any additional training?



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1 CHIEF FABIAN RIVERA - BY MR. SHIELDS

02:24 2 A. I don't -- I'm not aware of. They could
02:24 3 have, but I'm just not aware. I was an officer
02:24 4 myself.

02:24 5 Q. And the SWAT team has to follow all of the
02:24 6 regular general orders that the rest of the department
02:24 7 has to follow; correct?

02:24 8 A. Yes.

02:24 9 MS. JONES: Objection.

02:24 10 Q. And then in addition, the SWAT team is
02:24 11 also governed by the SWAT SOP?

02:24 12 A. Yes.

02:25 13 Q. And the chain of command is laid out in
02:25 14 the SWAT SOP?

02:25 15 A. Team structure, yes.

02:25 16 Q. And just for us, I want to put the SWAT
02:25 17 SOP up. And that will be Exhibit 3. And I just have
02:25 18 a couple questions.

19 (The following exhibit was identified for the
20 record: Number EXH 3.)

02:25 21 Q. Now, Chief Springer testified that this
02:25 22 draft of the SOP went into effect in around 2015 and
02:25 23 that he drafted it.

02:25 24 Does that sound accurate to you?

02:25 25 MS. JONES: Objection.



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1 CHIEF FABIAN RIVERA - BY MR. SHIELDS

02:25 2 A. Sounds accurate.

02:25 3 Q. Did you play any role in drafting the SOP
02:25 4 at all?

02:25 5 A. I believe I covered the sniper side of it.

02:26 6 Q. So in the 2015 SOP that we're looking at,
02:26 7 you drafted the portions that dealt with SWAT sniper
02:26 8 team?

02:26 9 A. I believe so.

02:26 10 Q. And is that because you were the sniper
02:26 11 team leader at the time?

02:26 12 MS. JONES: Objection.

02:26 13 A. I think I was just the senior member. I
02:26 14 think I was his assistant but had the breadth of
02:26 15 knowledge to assist in developing that portion.

02:26 16 Q. And after you became SOD commander, did
02:26 17 you order any changes to the SWAT SOP?

02:26 18 MS. JONES: Objection.

02:27 19 A. I don't recall. Only reason I answer that
02:27 20 way is from 2015, of course, to 2019 had to have been
02:27 21 some advances in technology and tactics and such. So
02:27 22 at this time, you know, I can't really tell you yes or
02:27 23 no. Just don't remember if I did or not.

02:27 24 Q. So you were the SOD commander from January
02:27 25 2018 until sometime in 2019; is that right?



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